BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: Mark Allen Levy, M.D. Physician's and Surgeon's License No. G47736 Respondent	Case No. 800-2017-038365

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on March 10, 2021.

IT IS SO ORDERED: February 8, 2021.

MEDICAL BOARD OF CALIFORNIA

Ronald H. Lewis, M.D., Chair
Panel A

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General
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California Department of Justice
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Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **MARK ALLEN LEVY, M.D.** **3000 Q ST** **Sacramento, CA 95816-7058** **Physician's and Surgeon's Certificate No. G 47736** Respondent.	Case No. 800-2017-038365 OAH No. 2020020109 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Medical Board of California of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brings this action solely in his official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Steve Diehl, Supervising Deputy Attorney General.

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2. Respondent Mark Allen Levy, M.D. (Respondent) is represented in this proceeding by attorney Donna W. Low, Esq., whose address is: 2150 River Plaza Drive, Ste. 250 Sacramento, CA 95833.

3. On or about June 28, 1982, the Board issued Physician's and Surgeon's Certificate No. G 47736 to Mark Allen Levy, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-038365, and will expire on April 30, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-038365 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 31, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-038365 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-038365. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2017-038365, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent agrees that, at a hearing, Complainant could establish a prima facie case for the charges in the Accusation,

11. Respondent does not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations in Accusation No. 800-2017-038365, a true and correct copy of which is attached hereto as Exhibit A, and Respondent hereby gives up his right to contest those charges. Respondent agrees that he has thereby subjected his Physician's and Surgeon's Certificate, No. G 47736 to disciplinary action.

12. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

13. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

14. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2017-038365 shall be

deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

15. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or opportunity to be heard by the Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 47736 issued to Respondent Mark Allen Levy, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

1. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedule III and IV of the Act.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. If Respondent forms the medical opinion, after an appropriate prior examination and medical indication, that a patient's medical condition may benefit from the use of marijuana, Respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that Respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or

the patient's primary caregiver may not rely on Respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits Respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

2. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and address of the patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

3. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the

Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

5. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

6. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

7. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

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8. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice ,Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

10. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than

30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing..

11. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

12. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

13. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

14. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

15. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2017-038365 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Donna W. Low, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 9/2/2020

MARK ALLEN LEVY, M.D.
Respondent

I have read and fully discussed with Respondent Mark Allen Levy, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 9/2/20

DONNA W. LOW, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

DATED: 9/3/20

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General

STEVE DIEHL
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-038365

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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **MARK ALLEN LEVY, M.D.** 3000 Q ST Sacramento, CA 95816-7058 **Physician's and Surgeon's Certificate No. G 47736,** Respondent.	Case No. 800-2017-038365 **ACCUSATION**

Complainant alleges:

PARTIES

1. Christine J. Lally (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about June 28, 1982, the Medical Board issued Physician's and Surgeon's Certificate Number G 47736 to Mark Allen Levy, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2020, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the board.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

STATUTORY PROVISIONS

5. Section 2234 of the Code, states:

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute

repeated negligent acts.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(f) Any action or conduct which would have warranted the denial of a certificate.

(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

6. Section 2266 of the Code states, "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

DEFINITIONS

7. "CURES" is the Controlled Substances Utilization Review and Evaluation System, and is a database that documents prescriptions filled for controlled substances in California.

8. Methadone is an opioid medication used to treat opioid dependence as well as for treatment of chronic pain. Side effects include respiratory depression and abnormal heart rhythm. Methadone is a Schedule II controlled substance.

9. Norco is a preparation of the opioid hydrocodone and acetaminophen. Norco 10-325 is a preparation containing 10 mg hydrocodone and 325 mg acetaminophen. Hydrocodone is a Schedule II controlled substance.

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10. Percocet is a preparation of acetaminophen and the opioid oxycodone. Oxycodone is an opioid medication used for treatment of moderate to severe pain. Side effects include respiratory depression. Oxycodone is a Schedule II controlled substance. Oxycodone without acetaminophen is sold under the brand name OxyContin.

11. QT interval is a measurement made on an electrocardiogram. An abnormally long or short QT interval may indicate an elevated risk of abnormal heart rhythm or sudden cardiac death.

12. Soma (carisoprodol) is a muscle relaxant medication used to treat musculo-skeletal pain. Side effects include headache, dizziness, and sleepiness. Carisoprodol is a Schedule IV controlled substance.

13. Tramadol is an opioid pain medication used to treat moderate to moderately severe pain. It is a Schedule IV controlled substance.

14. Xanax (alprazolam) is a short-acting benzodiazepine medication used to treat anxiety. Side effects include sleepiness and can include seizures. Alprazolam is a Schedule IV controlled substance.

15. Fentanyl is an opioid analgesic. Fentanyl is a dangerous drug as defined in section 4022 and a Schedule II controlled substance as defined by section 11055 of the Health and Safety Code, and a Schedule II controlled substance as defined by Section 1308.12 of Title 21 of the Code of Federal Regulations. Fentanyl's primary effects are anesthesia and sedation.

FACTUAL ALLEGATIONS

Circumstances Related to Patient A

16. Patient A has seen Respondent since 2006 for primary care, and treatment of her chronic back and knee pain. Beginning in April 2012, Respondent ceased prescribing fentanyl to her, and instead prescribed methadone for pain. In May 2012, the patient was seen by a pain management specialist, who recommended reducing the patient's opioid intake by 10% per month, and did not recommend further escalation even if the pain is not controlled.

17. On or about May 14, 2013, Patient A saw a new pain management specialist on referral from Respondent. The new specialist agreed with the prior pain management specialist's recommendation to reduce the patient's opioid intake. The new pain management specialist

recommended discontinuing Patient A's Soma, and transitioning to a muscle relaxant with less potential for abuse. The new specialist further recommended transitioning Patient A to a different opioid, but if methadone were to be continued, that her QT interval be monitored with electrocardiogram testing (12-lead ECG). Respondent did not follow these recommendations, and did not document a rationale for disregarding them.

18. On or about February 6, 2015, the patient again saw the most recent pain management specialist she had seen in 2013. The specialist again recommended discontinuing Patient A's Soma, and transitioning to a muscle relaxant with less potential for abuse. The specialist again recommended changing to another opioid medication, and suggested OxyContin. The specialist again recommended that if Patient A continued on methadone, that her QT interval be monitored by 12-lead ECG. Respondent did not follow these recommendations, and did not document a rationale for disregarding them.

19. On or about July 27, 2015, the patient again saw the pain management specialist she had seen in 2013. The specialist again recommended discontinuing Patient A's Soma, and transitioning to a muscle relaxant with less potential for abuse. The specialist noted Patient A's prolonged QT interval, and that methadone was therefore contraindicated, and stated "Please rotate to alterante [sic] opioid medication." Respondent did not follow these recommendations, and did not document a rationale for disregarding them.

20. Throughout 2015, 2016, and 2017, Respondent maintained Patient A on 540 or 630 methadone tablets per month, 180 Percocet tablets per month, and 240 Soma tablets per month. Respondent saw Patient A every 1-2 months during this period. Respondent did not monitor her cardiac function at any visit.

21. On or about April 18, 2018, Respondent prescribed Patient A Percocet at a rate of 1-2 tablets every 4-6 hours, and Soma at a rate of 1-2 tablets every six hours as needed. He returned her methadone to a rate of 6 tablets three times per day, from a previous temporary regimen of 7 tablets three times per day. Respondent again referred her to the pain management specialist she had seen in 2013 and 2015.

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22. On or about April 24, 2018, Patient A again saw the pain management specialist on referral from Respondent. The pain management specialist reiterated his prior recommendations, and further recommended that Patient A's total opioid treatment be tapered by 10% per month for ten months, and ultimately discontinued. He again noted the patient's documented prolongation of her QT interval, and that Methadone is contraindicated for her. He stated that Patient A's behavior "is manipulative and drug-seeking." The specialist further noted, "there are significant risks, including death, that [are] run by using these medications given her history. Also given her lack of objective findings to support such high-doses of opioids, it must be assumed her pain is secondary to opioid-induced hyperalgesia, addiction/abuse, or psychiatric illness. No matter the reason, opioids are contraindicated to treat her pain." Respondent did not follow the specialist's recommendation to taper Patient A's overall opioid intake or to substitute a different opioid, to monitor her cardiac function, or to discontinue her use of Soma, but did continue to taper her use of methadone. Respondent again did not document a rationale for disregarding the recommendations of the pain management specialist.

23. On or about July 23, 2018, Respondent continued to prescribe Patient A Percocet at a rate of 1-2 tablets every 4-6 hours, and Soma at a rate of 1-2 tablets every six hours as needed. He documented tapering her methadone to a rate of 4 tablets three times per day.

Circumstances Related to Patient B

24. Patient B was seen by Respondent from 2006 until the Autumn of 2017 for a variety of complaints, including seizures and chronic pain. Patient B had a history of hospitalization related to her use of Schedule II medications. Respondent prescribed a wide variety of medications to treat the patient.

25. On or about March 22, 2012, Patient B was seen by a pain management specialist who documented that opioid medications were not an appropriate therapy for the patient in light of her history.

26. On or about April 14, 2016, Patient B presented to Respondent. He prescribed Xanax 2 mg, 1 tablet every 6 hours as needed for anxiety, and OxyContin 30 mg extended release, 1 tablet every 12 hours for pain.

27. On or about July 21, 2016, Patient B presented to Respondent. He prescribed Xanax 0.25 mg, 1 tablet every 6 to 8 hours for anxiety. He prescribed Norco 10-325, 1 tablet every 12 hours as needed for pain.

28. On or about July 23 to July 26, 2016, Patient B was hospitalized for seizures. She was seen by a neurologist, who recommended that Xanax be discontinued, as it was suspected to be the cause of the patient's seizures.

29. On or about July 28, 2016, Patient B presented to Respondent. Respondent documented that her recent hospitalization was "thought again to be due to withdrawal seizures."

30. On or about August 4, 2016, Patient B presented to Respondent. Respondent documented "Encouraged to come off [Xanax] at the present time. I told her to stop it last time, but evidently she continued to take it." Respondent nonetheless prescribed Xanax 0.5 mg, one tablet every 6 hours. Respondent did not document why he was disregarding the recommendation of the neurologist, and did not make a neurological referral for the patient.

31. On or about October 14, 2016, Respondent documented that Patient B presented for follow-up after a period of no contact since August 2016. Respondent documented that the patient "seems to be somewhat dependent on the Xanax," and that he "tried to taper off that sometime quickly and evidently had some withdrawal seizures, which precipitated several emergency room visits." He documented that the patient was currently using Xanax 0.25 mg four times per day, and Respondent documented that he "talked about a slow taper on that." Respondent documented that the patient "is not a reliable person to have pain medications at this point." Respondent nonetheless prescribed Xanax 0.5 mg, one tablet every 8 hours as needed.

32. On or about February 27, 2017, Respondent documented that Patient B presented for follow-up on medications. He documented that she had stopped taking Xanax "for some time," and acknowledged the recommendation of the neurologist that, "we should try to get her off this if possible." However, CURES indicates that Patient B had been filling Xanax prescriptions issued by Respondent every month between October 2016 and February 2017, 0.5 mg, 90 tablets per month. Respondent restarted the patient's Xanax at 1 mg every 12 hours. He also prescribed Percocet, 1 tablet every 12 hours as needed for pain.

33. On or about July 3, 2017, Patient B presented to Respondent. Respondent continued the patient on Xanax 1 mg every 8 hours, and Oxycontin 30 mg twice per day. Respondent documented a urine screen that was positive for hydrocodone and morphine that was not prescribed by him. Respondent planned to repeat the patient's urine screen, and documented that if it was still abnormal "we may need to discontinue prescribing narcotics for her."

34. On or about August 3, 2017, Patient B called Respondent's clinic to report that her Oxycontin prescription had been stolen.

35. On or about August 6, 2017, Patient B called Respondent's clinic to inform Respondent that she was being treated for pain at a methadone clinic.

36. On or about September 8, 2017, Patient B presented to Respondent. Respondent documented that Patient B had been "inconsistent" in taking narcotics, and he would be discontinuing her narcotic pain medication. Respondent further documented that a urine screen was attempted, but the patient "threw the drug screen away, therefore we are not going to be able to give her any narcotics in the foreseeable future." Respondent nonetheless prescribed tramadol 50 mg every 6 hours as needed, and continued her Xanax 1 mg every 8 hours.

Circumstances Related to Patient C

37. Between 2011 and 2015, Patient C was seen by Respondent regarding a variety of medical issues, including chronic pain. Respondent prescribed 720 tablets of 10 mg methadone per month to Patient C between August 2011 and January 2014, except for May and June 2012, when he prescribed 540 tablets per month. No specific diagnosis supported these prescriptions other than "chronic back pain." No imaging or other studies supported this diagnosis.

38. Respondent monitored Patient C infrequently as a patient, but refilled Patient C's methadone prescriptions regularly. Patient C had numerous instances of noncompliance. On or about April 5, 2013, Respondent documented his first encounter with Patient C since "last fall [2012.]" He further noted, "he has not been too compliant in keeping his appointments." Respondent referred the patient to pain management, but the patient failed to comply with the referral. Patient C presented to Respondent again on or about October 4, 2013, and Respondent again referred the patient to pain management. Patient C did not present to Respondent again

until on or about July 10, 2014, and Respondent documented that the patient had again failed to keep the pain management appointment.

39. On or about October 13, 2015, Respondent documented that Patient C's urine screens were negative for methadone, but was positive for amphetamines, opiates, and marijuana. The patient denied selling his methadone, but admitted taking his friend's amphetamine and to smoking marijuana.

40. On or about November 6, 2015, Respondent dismissed Patient C from his practice. Respondent nonetheless refilled Patient C's methadone prescription, and told him to taper off the medication.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

41. Respondent Mark Allen Levy, M.D. is subject to disciplinary action under section 2234, subdivision (b), in that he committed acts or omissions amounting to gross negligence. The circumstances are set forth in paragraphs 16 through 40, which are incorporated here by reference as if fully set forth. Additional circumstances are as follows:

42. The standard of care requires that patients receiving methadone be monitored by electrocardiogram to check for QT prolongation and arrhythmia. Respondent's failure to monitor Patients A or C while prescribing methadone to these patients constitutes gross negligence.

43. The standard of care requires that patients receiving methadone be followed closely, with regular drug screens, cardiac monitoring, and regular follow-up appointments. Noncompliant patients should be dismissed from further treatment and referred to pain management or social services. Patient C was repeatedly noncompliant and Respondent failed to closely monitor the patient with regular follow-up visits. Respondent's failure to dismiss this patient until 2015, and instead continuing to regularly issue large prescriptions of methadone to Patient C over a period of years despite the patient's noncompliance, constitutes gross negligence.

44. The standard of care for treatment of chronic pain is to cooperate and coordinate care with pain management specialists. Any disagreement with the recommendations of a pain management specialist should be documented. Respondent's failure to either follow the

recommendation of the pain management specialist regarding Patient A, or to document the reasons for his disagreement with that recommendation, constitutes gross negligence.

45. The standard of care is to write prescriptions for controlled substances in triplicate, with copies of scripts maintained separately from the medical chart. Between 2015 and 2018, Respondent failed to maintain triplicate copies of scripts he wrote for Patient A for methadone, Percocet, and Soma. These failures constitute gross negligence.

46. The standard of care for management of seizure is to discontinue medications with the potential effect of inducing future seizures. Respondent attempted to taper Patient B's Xanax use in July 2016, precipitating withdrawal seizures. Respondent then resumed the patient's Xanax against the recommendation of a neurologist. In February 2017, Respondent failed to take note that the patient had been taking Xanax continuously for months, and instead noted incorrectly that she had been off Xanax "for some time." In spite of this, Respondent then resumed the patient's Xanax. Respondent's continuation of Patient B's Xanax following her July 2016 hospitalization for seizure, without documentation of why he prescribed the medication against the orders of the neurologist, and in the absence of a neurological consultation, constitutes gross negligence.

47. The standard of care for prescribing controlled substances is to refer noncompliant patients to pain management or drug addiction programs immediately. Patient B was repeatedly noncompliant with Respondent's instructions with respect to the use of controlled substances, and had multiple urine screens indicating noncompliance. However, Respondent continued to attempt to manage Patient B's care despite her noncompliance, constituting gross negligence.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

48. Respondent Mark Allen Levy, M.D. is subject to disciplinary action under section 2234, subdivision (c), in that he committed repeated acts of negligence. The circumstances are set forth in paragraphs 16 through 47, which are incorporated here by reference as if fully set forth.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 47736, issued to Mark Allen Levy, M.D.;

2. Revoking, suspending or denying approval of Mark Allen Levy, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Mark Allen Levy, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: December 31, 2019

CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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